(1) C.F. 100/— 03

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH).

W.P.NO. 2953 **/2005.**

PETITIONER ... **TAPADIA ENGINEERS AND TRADERS PVT. LTD.,** A Company constituted and registered under the Indian Companies Act, Business place at 2 Industrial Estate Bhanpuri, Raipur (C.G.).

3098/05
3098/05
6-7-05.
C.R. No.
Presented by Shri Sanjay Sahu
dated 6-7-05

VERSUS.

RESPONDENT ... **KONARK CYLINDERS AND CONTAINEERS PVT. LTD.,** Plot No.12, Sector – A Zone B Maheshwar Industrial Area Bhuneshwar (Orissa).

PETITIONER UNDER ARTICLE 227 OF CONSTITUTION OF INDIA.

The petitioner named above begs to submit as under:-

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. No. 2953/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14/11/2005 Shri Deepak Vaswani, counsel for the petitioner. Heard. The petitioner by the instant petition under Article 227 of the Constitution, as he is aggrieved by the impugned order dated 10/01/2005 passed by learned V[th] Additional District Judge, Raipur in execution case No. 5B/2003 (Tapadia Engineers & Traders Pvt. Ltd. Vs. Konark Cylinders and Containers Pvt. Ltd.) by which the application under Section 39 & 40 of the CPC for transfer of decree to the competent Court at Bhuwaneshwar (Orissa) for execution has been rejected. Learned counsel for the petitioner submits that there is a decree in favour of the petitioner against the respondent/Judgment Debtor for a sum of Rs. 2,24,149/-. The petitioner initiated the above execution proceedings against the respondent before the Court below and prayed that the execution proceedings be transferred to the competent Court at Bhuvaeshwar (Orissa) as the movable and immovable property of the judgment debtor is situated at Bhuwaneshwar (Orissa). However, the above application has been rejected by the impugned order. Learned counsel for the petitioner submits that the Court below has failed to exercise the jurisdiction lawfully vested in it under Section 39 (1) of the CPC and the same is passed on misreading of Section 39 (4) of the Code. I have heard learned counsel for the petitioner.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....W.P.No.2953/05..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-2-	

Section 39 (1) of the Code describes the conditions on which the Court that had passed a decree may, send the decree for execution to another Court of competent jurisdiction if the judgment debtor does not have sufficient property to satisfy the decree within the local limits of the Court's jurisdiction. However, the learned trial Court by misreading Sub-section 4 of Section 39 of the Code has refused to exercise the jurisdiction vested in it.

In the aforesaid circumstances, the impugned order is set aside and the matter is remanded back to the Court below to pass appropriate order afresh under Section 39 (1) of the Code after hearing the counsel for the petitioner.

Sd/-
Dhirendra Mishra
Judge

SP/FS/2005 - 20,000

22.11.05